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STATE FOR WHA/CAR

E.O. 12958: N/A
TAGS: PGOV PREL PHUM HA
SUBJECT: HAITI: THE CASE FOR CONSTITUTIONAL REFORM

¶1. (U) This message is sensitive but unclassified -- please protect accordingly.

Summary

¶2. (SBU) Haiti's constitution has multiple flaws that hamper the country's governability. Frequent national elections, an imbalance of power between executive and legislative branches, an unclear division of authority between the President and Prime Minister, and an overly-complicated system of local government hinder governance in Haiti. There is broad agreement that the constitution needs reworking, but achieving a consensus will be difficult. President Preval this year appointed a special commission to submit amendment proposals to parliament. The constitution's procedures leave a short window of opportunity if amendments are to be passed that can take effect after Preval leaves office: the current parliament must pass the amendments this year, and the next legislature which takes office in January 2010 must pass them again. End Summary.

Reaction to Duvalierism

¶3. (U) Haiti's current constitution was ratified in 1987, barely a year after Jean Claude Duvalier was forced out of office. Its guiding motive was to check Haiti's strong presidentialist tradition, which the Duvaliers had hijacked to create a dynastic dictatorship. The document's framers split the Executive in two, creating a President and Prime Minister. They gave the parliament broad powers to check the government and President. Frequent, staggered national elections force government to be accountable at various levels every one to two years. Multiple layers of local government are meant to decentralize state power. While Haiti's destructive heritage of political conflict continues to hamper political stability, the constitution bears significant responsibility for problems of governability.

National Government Structure

¶4. (SBU) The element of the 1987 constitution that has caused the most frictions in governance is the balance of power between the executive and legislative branches. The President is limited to two non-consecutive terms. The constitution gives the legislature large powers to check the executive. The president nominates the Prime Minister, but that nominee must pass two votes in each chamber of parliament to be confirmed. The President cannot dismiss the Prime Minister, but either chamber of Parliament may dismiss the Prime Minister, any other minister, or the entire government by majority vote. The President has no power to dismiss the Government or any member thereof, or to dissolve Parliament and call new elections. He has no effective veto power over legislation. Within eight working days of receiving a bill signed by parliament, he must either sign it or return it to Parliament with "objections," which the parliament can override by majority vote.

15. (SBU) This semi-parliamentarian, semi-presidential hybrid would make governance difficult in even the most developed of democracies, but it has proved especially dysfunctional in Haiti. It has given Parliament the tools to block the executive, as it did when it shot down two prime ministerial nominees in 2008, and held up the 2008 budget for nearly six months in 2009. Yet parliamentarians' generally low level of education and political skill leaves their institution weak and its members focused on posturing to their constituencies - as we observe in the current minimum wage dispute, one of the few recent cases where parliament has used its power of legislative initiative. Thus, this constitution has not cured Haiti of its tradition of presidentialismumping the legislature. All but a handful of bills the legislature considers are drafted and submitted by the Presidency. Preval (or any other President) can "end run" Parliament by 1) buying off Deputies and Senators, or 2) delaying elections to weaken or effectively dissolve the legislature when terms run out so that the President can rule by decree, as Preval did during his first term.

Divided Executive Power

16. (SBU) Haiti never had a Prime Minister under previous constitutions: all executive power was held by the President. The 1987 framers wrote the office of Prime Minister into the constitution as another strategy to check the excessive powers of the President. Yet they failed to give the Prime Minister adequate power. The current arrangement is not a traditional division between head of government and a ceremonial head of state: the President shares executive power with the Prime Minister. The constitution makes the Government responsible for the execution of

PORT AU PR 00000632 002 OF 004

all laws, and says that the Government "carries out national policy." The President, however, "presides" over the Council of Ministers. The President and Prime Minister jointly choose the ministers of government, and are jointly responsible for national defense. The constitution makes the President ultimately responsible for the government and all public officials. While the division of powers is vague, the balance in practice has favored the President.

17. (SBU) The result has been a Prime Minister hemmed in by presidential interference and unable to effectively lead the government. President Preval in his second term has given his Prime Ministers very limited say in selecting cabinet ministers, making ministers effectively responsible to him. The constitution theoretically allows a strong President to lead the government. However, Preval has not tried to do so, but has continuously intervened in minute ministerial details. His management style, exercised within this clumsy constitutional arrangement, has left the government with no clearly defined leader.

Too Frequent Elections

18. (SBU) The final major issue of national government is the complicated cycle of national elections caused by differing term lengths of elected legislative and executive officials. The President is elected for five years, mayors and municipal legislators for four, national legislators for four, and Senators for six - with one-third of the Senate renewed every two years. This makes for national elections every one to two years. The cost (over USD 15 million for this year's partial Senate elections), the organizational weakness of Haiti's electoral authority, and the fragility of Haiti's political fabric in the face of elections' divisiveness have made frequent elections too large a load for this body politic to bear, and too expensive for the state without significant international donor financing.

Intricate System of Local Government

19. (SBU) The final piece of state architecture that many want to amend is the multi-tiered system of local government that is too

complicated and expensive for a state as poor and small as Haiti. Municipalities are broken down into "communal sections," each with an elected legislative assembly and executive council. Each municipality has an elected assembly and an elected mayor and two deputy mayors. All the municipal assemblies in a department elect one of their members to sit in a departmental assembly, which in turn elects a departmental council. A "delegate" appointed by the President assists in the governing of the Department. Each Departmental Council selects one of its members to an "Interdepartmental Council" which sits with the Cabinet of Minister to decide on development and local government issues. The Departmental Councils are also empowered to present nominees for the Permanent Electoral Council, from which list the President, Parliament and Supreme Court select the final members.

¶10. (SBU) In the more than 22 years this constitution has been in force, none of the local government institutions above the level of the municipality has been established. No legislation defining local government's powers, especially the power of taxation, has been passed. (Note: A bill defining the modalities and powers of local government - the "decentralization" bill - has been submitted to parliament, but we anticipate there will be protracted debate in parliament and civil society before the bill is passed. End note) The result is stunted and underfinanced local government starved for funds by the central government. Presidents have been loath to encumber the government with an Interdepartmental Council. Failure to hold indirect elections to Departmental Assemblies and Councils has deprived Haiti of the stabilizing influence of an independent electoral authority in the form of a Permanent Electoral Council (CEP). (Note: It is also the case that the CEP is accountable to no one. Its decisions cannot be appealed. This is also true of the number of provisional CEPs that presidents have appointed since ¶1987. End note) The Sectional assemblies and councils have little power. Municipalities suffer from the triumvirate system of mayors.

Any constitutional reform of local government will likely reduce the number of layers, possibly by eliminating communal sections, departmental assemblies and councils, and the Interdepartmental Council.

Dual Nationality

¶11. (SBU) There is nearly universal agreement that the ban on dual nationality imposed by article 15, and the automatic loss of Haitian nationality upon acquiring foreign citizenship imposed by article

PONT AU PR 00000632 003 OF 004

13, must both be changed. Successive waves of emigration for economic and political reasons have marked Haitian history since at least WWII. The ranks of Haiti's middle and upper classes - including elected and appointed officials - are larded with foreign passport (and permanent residency) holders who acquired foreign nationalities when they studied or worked abroad, many of them after fleeing the Duvalier regime. While the government lacks the capacity to monitor its citizens to enforce these citizenship provisions, foreign passport holders must keep their foreign nationality secret to avoid losing their Haitian citizenship. There is also broad agreement that the ban on dual nationality deters the large Haitian diaspora, especially the large middle class of professionals - from returning to Haiti and investing in and contributing to the country's development.

¶12. (SBU) On the other hand, Haitians harbor a suspicion of foreign influence in their national life, especially in politics. This is the source of the constitutional provision that requires that all national legislators, executive branch officials, and judges be Haitian "by origin," i.e., that they be born of Haitian citizen parents and grandparents all born in Haiti who never lost their citizenship. Haiti's unreliable birth records - especially prior to the early 20th century - have made this provision a handy tool for Parliament to shoot down presidential nominees for Prime Minister. Relaxing this strict requirement would force parliamentary confirmation of PM nominees onto the political plane where it belongs. While there is broad agreement that the ban on dual nationality should be lifted, many political leaders believe that foreign nationality and long periods of foreign residence should

disqualify a person from holding high public office.

A Constitutional Court?

¶14. Although article 183 of the constitution empowers the High Court of Appeals (Cour de Cassation) to rule on the constitutionality of laws, it has rarely if ever done so. Constitutional experts believe Haiti requires an independent Constitutional Court with the power of judicial review of laws to determine their constitutionality.

The Armed Forces

¶15. (SBU) The 1987 constitution sets down terms and responsibilities of the "armed forces" of Haiti, including army, navy and air force. President Aristide disbanded the armed forces in 1995. There is strong sentiment in this country that Haiti should reestablish its national armed forces, or at least a security force such as a gendarmerie. Constitutional reform will not settle that question, but could amend articles intended to place the armed forces beyond political interference but also potentially placing them beyond civilian control. For example, the constitution allows the armed forces to set their own terms of recruitment, promotion, and retirement; requires their consent to all dismissals, suspensions and early retirements; and gives the armed forces exclusive authority over the manufacture, import, export and use of weapons and materials of war.

Amending the Constitution a Presidential Priority

¶16. (SBU) The weaknesses of the 1987 constitution have long been debated, but President Rene Preval forced constitutional reform onto the political agenda. He shocked Haiti's political world on Dessalines Day in October 2007 when he named Haiti's 1987 constitution the major source of Haiti's political instability. He then floated a plan to call a moratorium on elections and use that time to devise a new constitution. Strong international community resistance dissuaded Preval from pursuing this plan.

¶17. (SBU) Preval nevertheless has held firm to his plan to amend the constitution, while remaining flexible as to how. In a 2008 press interview in the Dominican Republic and in a subsequent private meeting with diplomats, the President rejected using the constitution's own provisions, and implied he wanted to write an entirely new constitution. Preval then changed his mind. Last February 19, he appointed a "Working Group on the 1987 Constitution" to draft recommendations for the President on constitutional reform. Embassy sources report that Preval overruled a commission vote in favor of recommending drawing up a new constitution, and ordered this body to deliberate on amendments to the 1987 constitution. Preval has acknowledged privately that many suspect his motives for supporting constitutional amendment, believing he wants to follow the example of Hugo Chavez and other populist Latin American presidents and allow himself a third term. He insists this is not the case.

POR T AU PR 00000632 004 OF 004

¶18. (SBU) The working group is led by constitutional scholar and "Le Matin" chief editor Claude Moise. Moise's committee is holding public meetings in Haiti's regions to discuss constitutional reform with representatives of local government, trade unions, the judiciary, primary and secondary education, and civil society groups. They plan to meet with the diaspora in Miami and New York. Their mandate is to produce a report to the President by this month with recommendations for constitutional reform. Palace sources say the report will be formally released July 10. Based on the Working Group's recommendations, a yet-to-be-appointed board of constitutional experts will draft specific articles of amendment.

Prospects for Constitutional Reform

¶19. (SBU) Preval's 2008 comments and his appointment of a commission

on constitutional reform have sparked little public debate.

"Fusion" is the only party to have taken a stand: it issued a position paper in January which highlights some hurdles ahead for Preval's constitutional reform project. The paper predicts there is broad agreement for 1) accepting dual nationality except for high office-holders, 2) for holding national elections every four years by reducing the President's term to four years and increasing that of Senators to eight, with half the Senate renewed at every election, and 3) for creating a constitutional court. It also proposes that the PM require only one vote for confirmation in office, when he/she presents the government for the first time. The paper suggests that the structure of local government should be simplified, and says this should be taken out of the constitution and left to legislation.

¶20. (SBU) On the other hand, "Fusion" lays down a series of "untouchable" principles, principles that reflect Haitian democrats' continuing fear of Executive abuse of power. Their position paper rejects any change that would 1) reduce the power of parliament, 2) allow the President to dissolve parliament, 3) eliminate the split of the Executive Branch into a President and Prime Minister, or 4) allow the President more than two non-consecutive terms. The first three of these principles go to the heart of how the current constitution hampers governability. Embassy believes that achieving parliamentary consensus on amending any of these "Fusion" redlines would be difficult.

¶21. (SBU) The window of opportunity for passing amendments that can take effect when Preval leaves office is closing fast. Constitutional amendments must be passed by 2/3 vote in both houses of two consecutive legislatures, and cannot take effect until the next President takes office. Thus, the current legislature (fortified by newly elected Senators who should take office early-mid July) must pass the amendments by the end of the current session in mid-September - or by the end of the year should the President convoke the parliament into special session. If the November 2009 legislative elections (for the entire Chamber of Deputies and one-third of the Senate) are delayed, which is highly likely, that deadline would extend to May 2010. (The 2008 electoral law extends deputies' mandates to that date if elections are held late.) The next legislature must then pass the amendments in exactly the same language. The amendments would take effect after Preval's successor is sworn in, in February 2011. If Haiti misses this window of opportunity, the next chance amendments could take effect would be after the inauguration of the following President, in February 2016.

Comment: What/Whom to Blame for Haiti's Political Dysfunction?

¶22. (SBU) Preval's blaming Haiti's post-Duvalier political instability on the constitution was an exaggeration designed to deflect responsibility from Haiti's leaders, including himself. Destructive political habits have hindered the formation of statesmanlike leaders and strong institutions. Political culture and institutional weakness more than the current constitution are at the root of Haiti's political instability. A better constitution will not cure these ills. But clearer and more balanced lines of authority would remove certain barriers to more productive relations between the Legislative and Executive branches, and allow the Government to govern with less presidential interference. A consolidated elections calendar would make elections more affordable and reduce the vulnerability of Haiti's fragile body politic to divisiveness of campaigning. A simplified architecture and greater taxation powers could make local government capable and accountable. More generous citizenship provisions could entice some of the Haitian diaspora to invest money and talent back into their country of origin.

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